



Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.  
*Commissioner*

Wendy E. Saunders  
*Chief of Staff*

October 31, 2007

Ms. Cynthia Potter  
Center for Medicaid and State Operations  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard  
Mail Stop S2-25-22  
Baltimore, Maryland 21244-1850

Re: REQUEST FOR RECONSIDERATION  
Centers for Medicare & Medicaid Services Disapproval of  
New York State Title XXI State Plan Amendment #10

Dear Ms. Potter:

Pursuant to procedures set forth in section 457.203 of Title 42 of the Code of Federal Regulations ("C.F.R."), the New York State Department of Health ("NYSDOH") hereby requests expedited reconsideration of the disapproval by the Centers for Medicare and Medicaid Services ("CMS") of the above mentioned proposed amendment to New York State's Title XXI, State Children's Health Insurance Program ("SCHIP"), State Plan. By letter dated September 7, 2007 (copy enclosed), CMS informed NYSDOH that its proposal to increase the financial eligibility standard from 250 percent of the federal poverty level to 400 percent of the federal poverty level for its separate SCHIP program was disapproved.

New York submitted its State Plan Amendment #10 ("SPA") in accordance with section 2106(b) of the Social Security Act and procedures set forth in 42 C.F.R. Part 457, in order to implement by September 1, 2007 various provisions of N.Y. Public Health Law §§ 2510 and 2511 governing an increase in financial eligibility for its child health insurance program from 250 percent of the federal poverty level to 400 percent of the federal poverty level, with a mandatory six month period of no insurance, subject to certain exceptions related to involuntary loss of coverage, applicable to children within the new population.

The sole basis for the disapproval by CMS is that New York fails to meet newly imposed federal standards and required assurances regarding "crowd out" and target rate of coverage set forth in a CMS letter to State Health Officials dated August 17, 2007.

The NYSDOH respectfully requests another review and reconsideration of its SPA in accordance with the existing, legally promulgated, federal standards, setting aside application of the illegal standards set forth in the August 17 letter. These standards conflict with Title XXI and existing federal regulations, and they exceed the authority vested in the Secretary by Congress. They also constitute illegally promulgated regulations in violation of the notice and comment provisions of the federal Administrative Procedure Act.

Given the proposed September 1, 2007 implementation date of New York's SPA, and the harm being done to New York's children each day that the SPA stands as not approved, NYSDOH respectfully requests that CMS reconsider its SPA on an expedited basis with any hearing date set as soon as possible.

A copy of this petition for reconsideration has been sent to Sue Kelly, Associate Regional Administrator, Centers for Medicare & Medicaid Services, Division of Medicaid and Children's Health, 26 Federal Plaza, Room 3811, New York, NY 10278-0063. If you have any questions pertaining to this petition, please contact Judith A. Arnold, Director, Division of Coverage and Enrollment, Office of Health Insurance Programs, 518-474-0180 and [jaa01@health.state.ny.us](mailto:jaa01@health.state.ny.us).

Sincerely,

A handwritten signature in black ink that reads "Deborah Bachrach". The signature is fluid and cursive, with the first name "Deborah" and last name "Bachrach" clearly distinguishable.

Deborah Bachrach  
Deputy Commissioner  
Office of Health Insurance Programs

Enclosure

cc: Sue Kelly  
Judith A. Arnold